UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WENDY HEALEY, Plaintiff, v. TRANS UNION LLC, et al., Defendants.	CASE NO. C09-0956JLR ORDER ON MOTION FOR SUMMARY JUDGMENT

This matter comes before the court on Defendant Debt Recovery Solutions, LLC's ("DRS") motion for summary judgment (Dkt. # 55).[1] Plaintiff Wendy Healey opposes DRS's motion. (Dkt. # 59.) Having reviewed the parties' submissions, the balance of the record, and the governing law, and having heard oral argument, the court GRANTS in part and DENIES in part DRS's motion for summary judgment.

[1] Ms. Healey dismissed her claims against Defendant Trans Union LLC in October 2010. (Dkt. # 43.) At oral argument on May 18, 2011, Ms. Healey's counsel represented that she has also settled her claims against Defendant Experian Information Solutions, Inc. ("Experian").

I. BACKGROUND

This case arises out of DRS's efforts to collect a debt that it purchased from Embarq (referred to by the parties as the "Sprint/Embarq account").[2] The debt was based on a delinquent Sprint cellular telephone account that had been opened under the name "Wendy Healey" at a Tallahassee, Florida address in 2004. Plaintiff Wendy Healey asserts that the delinquent account is not hers, that she has never had an account with Sprint or Embarq, and that she has never lived in Tallahassee, Florida. (Healey Decl. (Dkt. # 61) ¶ 1.)

Beginning in 2005, Embarq assigned the debt to two prior collection agencies, both of which attempted to collect the debt on the Sprint/Embarq account from Ms. Healey. (*Id.* ¶ 2.) Ms. Healey successfully stopped both collection efforts. (*Id.*) On February 6, 2007, however, Ms. Healey received a letter from a third collection agency, DRS, demanding payment of $902.77 due on the Sprint/Embarq account. (Felton Decl. (Dkt. # 56) Ex. C.) The letter, which was addressed to Ms. Healey in Everett, Washington, stated that DRS had purchased the debt from Embarq and that the letter marked the beginning of its collection process. (*Id.*) The letter further informed Ms. Healey that DRS would assume the debt was valid unless Ms. Healey notified DRS within 30 days that she disputed the debt; and if DRS received timely notification of a dispute, within 30 days, it would obtain a verification of the debt and mail a copy to Ms. Healey. (*Id.*) Finally, the letter notified Ms. Healey that a negative credit report had been

[2] Neither Sprint nor Embarq are parties to this action.

submitted to a credit reporting agency. (*Id.*) Don Schwartz, chief operating officer of DRS, testified that DRS did not submit the negative credit report—rather, the negative credit report had been submitted by some other entity before DRS purchased the account. (Felton Decl. Ex. B ("Schwartz Dep.") at 24-26.) The record does not reflect who submitted the negative credit report prior to DRS's involvement.

On March 1, 2007, Ms. Healey sent DRS a letter titled "Request for Debt Validation." (Felton Decl. Ex. E at HEALEY 000938.) In her letter, Ms. Healey stated that that she was "disputing this collection account as I have never had an account with Embarq." (*Id.*) Ms. Healey did not describe her past efforts to delete the Sprint/Embarq account from her credit report or provide any other information about the account. (*Id.*) Ms. Healey asked DRS to provide proof within 30 days that she was obligated to pay the debt, including the following items:

1. Agreement with your client that grants you the authority to collect this alleged debt.
2. Agreement that bears the signature of the alleged debtor wherein he/she agreed to pay the creditor.
3. A copy of the original application by this debtor—including the source of collateral used to gain this credit.
4. The complete payment history on this account so I have proof that the amount is correct.

(*Id.*) Ms. Healey's letter included an address in Arlington, Washington, because she had moved from Everett earlier that year. (*Id.*) On March 7, 2007, DRS noted in its records that the account was in dispute and that it had requested documents to verify the debt. (Felton Decl. Ex. D. ("Collection Notes") at DRS 0001.)

On May 3, 2007, Ms. Healey sent a follow-up letter to DRS in which she stated that she had not received a response within 30 days as requested in her earlier letter. (Felton Decl. Ex. E at HEALEY 000941.) She provided no additional information about the account. (*Id.*) DRS noted in its records it received the letter, that the account was in dispute, and that it had requested verification documents. (Collection Notes at DRS 0001.)

On July 5, 2007, DRS sent verification documents to Ms. Healey. (*Id.*) On July 23, 2007, DRS noted in its records that it had received new contact information for Ms. Healey, and the next day, DRS sent copies of the verification documents to the new address. (*Id.*) Ms. Healey did not receive either set of documents that DRS mailed in July 2007. (*See* Healey Decl. ¶ 4.) Neither mailing is in the record before the court.

In January 2008, DRS noted in its records that Ms. Healey had not responded to its July 2007 mailings. (Collection Notes at DRS 0002.) DRS reactivated Ms. Healey's collection account, and on January 14, 2008, DRS sent Ms. Healey a second letter demanding payment of the Sprint/Embarq debt. (*Id.*; Felton Decl. Ex. F.)

On January 21, 2008, Ms. Healey sent another "Request for Debt Validation" letter to DRS. (Felton Decl. Ex. G.) The letter is nearly identical to Ms. Healey's March 2007 letter. Ms. Healey stated that she had never had an Embarq account; noted that she never received the validation documents she requested in March 2007; and asked DRS to send her, within 30 days, the same four items listed in her March 2007 letter. (*Id.*) On January 25, 2008, DRS again noted in its records that the account was in dispute.

(Collection Notes at DRS 0002.) DRS's records reflect that it again sent the verification documents to Ms. Healey. (*Id.*)

On February 19, 2008, DRS noted in its records that it had received no response from Ms. Healey regarding the verification documents, and it again reactivated Ms. Healey's collection account. (*Id.*) On February 20, 2008, DRS sent a third letter to Ms. Healey demanding payment. (*Id.*; Felton Decl. Ex. H.) The letter asked Ms. Healey either to pay the debt or to contact DRS to discuss resolution of the debt. (*Id.*) In addition, DRS, for the first time, reported Ms. Healey's delinquent account to the credit reporting agencies. (Schwartz Dep. at 27.)

On March 9, 2008, Ms. Healey sent a letter to DRS. (Felton Decl. Ex. I.) Ms. Healey stated that she had received no response to her January 2008 request for validation documents, and warned that she intended to file suit if DRS did not respond within 15 days. (*Id.*)

On March 18, 2008, DRS again mailed a response to Ms. Healey's request for documents to verify the debt. (Felton Decl. Ex. J; *see also* Collection Notes at DRS 0003.) DRS's response included invoices and billing statements for a Sprint cellular telephone account in the name of Wendy Healey at an address in Tallahassee, Florida. (Felton Decl. Ex. J.) DRS asked Ms. Healey to "remit payment immediately or call our customer service department . . . if further information is required." (*Id.* at HEALEY 000109.)

Although Ms. Healey received DRS's March 18, 2008 mailing, she did not contact DRS or otherwise respond to the mailing. (*See* Felton Decl. Ex. A ("Healey Dep.") at

277.) Having received no response to the verification documents, DRS again reactivated Ms. Healey's account, and, on May 7, 2008, sent Ms. Healey a fourth collection letter. (Felton Decl. Ex. K; *see also* Collection Notes at DRS 0003.) Ms. Healey did not respond to the collection letter. (Healey Dep. at 268.)

On June 12, 2008, DRS sent a fifth collection letter to Ms. Healey. (Felton Decl. Ex. L at HEALEY 000102.) Again, Ms. Healey did not respond to DRS's letter. (Healey Dep. at 270.)

On July 21, 2008, DRS sent a sixth collection letter to Ms. Healey in which it offered to settle the debt for 85% of the amount owed on the account. (Felton Decl. Ex. L at HEALEY 000099.) The letter included the following language:

> A SETTLEMENT OFFER
> YOU JUST CANNOT AFFORD TO PASS UP!!
> *** 15% OFF YOUR BILL ***
>
> That is right – if you pay just $767.36 of the $902.77 that you currently owe, this account will be considered SETTLED IN FULL. Upon clearance of the funds we will notify the National Credit Reporting Agencies that this account has been settled. To take advantage of this offer, your payment of $767.36 must be received on or before 08/11/08.

(*Id.*) Ms. Healey did not respond to the letter. (Healey Dep. at 271.)

On August 28, 2008, DRS sent a seventh collection letter to Ms. Healey, again offering to settle the debt for 85% of the amount owed. (Felton Decl. Ex. L at HEALEY 000095.) This letter included the following language:

> WE DON'T NEED A LOT OF WORDS
> TO MAKE OUR POINT
> WE WANT YOUR PAYMENT – NOW

> Even though you missed the deadline imposed by our recent settlement offer, we are still convinced that there has never been a better time to put an end to this unpleasant situation.
>
> Call it a good will gesture or just an honest attempt to clear this debt from an inventory of delinquent receivables that are still unpaid. Whatever the reason, our previous offer of settlement that had recently expired is now extended until 09/18/08. If you accept this offer, you will save $135.41 and begin the process of repairing your damaged credit reputation at the same time.
>
> Don't lose this opportunity. Send us your check for $767.36 and upon clearance of funds, your account will be considered settled and the appropriate Credit Reporting Agencies will be instructed to change the status of this account.

(*Id.*) Ms. Healey did not respond to the letter. (Healey Dep. at 271.)

On October 10, 2008, DRS sent an eighth collection letter to Ms. Healey, this time offering to settle the debt for 75% of the amount owed. (Felton Decl. Ex. L at HEALEY 000091; *see also* Collection Notes at DRS 0004.) This letter included the following language:

> Our last settlement offer was certainly most generous—but apparently we just didn't give you enough time to gather the funds before the offer expired. We also didn't suggest an alternative repayment program—a different way of finally paying down this debt.
>
> IN RESPONSE—
> The first thing we will do is open the window of opportunity a little wider and extend our settlement offer until 10/31/08. We are sure this additional time will help you secure the funds required to settle this debt. And, using some creativity and recognizing the financial constraints that we all must live under, we will accept the settlement amount in two (2) payments, each in the sum of $338.54. The first check must be received by 10/31/08 and the remaining check must be received by 11/31/08.

(*Id.*) Ms. Healey did not respond to DRS's letter. (Healey Dep. at 277.)

On October 20, 2008, DRS sent another copy of the Sprint/Embarq account invoice to Ms. Healey. (Felton Decl. Ex. M.) Ms. Healey did not respond to this mailing. (Healey Dep. at 277.)

On November 21, 2008, when Ms. Healey applied for a loan to buy a new vehicle, she learned that DRS's collection activity was appearing on her Experian credit report. (Healey Decl. ¶ 16.) Ms. Healey's credit union asked her to provide proof that the Sprint/Embarq delinquency on her credit report was not hers before it would approve the loan. (*Id.*) Although Ms. Healey felt humiliated and embarrassed, she provided the requested proof and obtained an automobile loan that same day. (Supp. Felton Decl. (Dkt. # 64) Ex. A ("Healey Dep.") at 308-09.) According to Nancy Bolling, the mortgage lending administrator for Northwest Plus Credit Union, Ms. Healey qualified for the best loan rates the credit union had available. (Felton Decl. Ex. S ("Bolling Dep.") at 18.)

On November 22, 2008, Ms. Healey sent a letter to DRS in which she stated that the Sprint invoices that she received in March and October 2008 did not constitute proper validation of the debt. (Felton Decl. Ex. N.) Her letter attached copies of two letters purportedly written by a Federal Trade Commission attorney which, she contended, proved that DRS's conduct was illegal. (*Id.*) Ms. Healey also sent letters to Trans Union and Experian. (Felton Decl. Exs. O, P.) In these letters, Ms. Healey challenged the improper reinsertion of the debt on her credit report and explained that she had removed the Sprint/Embarq account from her report twice before. (*Id.*) Finally, Ms. Healey sent letters to the attorneys general of Kansas, Georgia, Pennsylvania, Texas, and New York

to ask for help resolving the Sprint/Embarq account. (Healey Decl. Ex. 22.) Although Ms. Healey's letter to the attorneys general contained a detailed chronology of her attempts to resolve the Sprint/Embarq account, she did not include this information in her letters to Trans Union, Experian, or DRS. (*Compare id. with* Felton Decl. Exs. O, P.)

DRS received Ms. Healey's letter on November 28, 2008. (Collection Notes at DRS 0004.) DRS again noted in its records that the account was in dispute, and set Ms. Healey's account status to No Calls and Stop Mail. (*Id.* at DRS 0004-0005.) On January 8, 2009, DRS instructed the credit reporting agencies to delete the Sprint/Embarq account from Ms. Healey's credit record. (Collection Notes at DRS 0007.)

Ms. Healey's letter also triggered responses from Trans Union and Experian. On December 2, 2008, Trans Union sent Ms. Healey a letter in which it stated that the disputed information did not appear on her credit report. (Felton Decl. Ex. Q.) Experian, for its part, initiated a dispute investigation with DRS. (Baxter Decl. (Dkt. # 60) Ex. 2 ("Hughes Dep.") at 92-93.) On December 23, 2008, Ms. Healey obtained a copy of Experian's investigation report. (Healey Decl. ¶ 18 & Ex. 19.) The first page of the report noted that Experian had investigated the disputed DRS account and that the account had been "verified as accurate." (Healey Decl. Ex. 19 at 1.) The report also noted that Ms. Healey disputed the account, and that the account had been reported since February 2008. (*Id.* at 3.)

On January 12, 2009, Ms. Healey obtained a copy of a Credit Plus mortgage credit when she and her husband attempted to refinance their home. (Healey Decl. ¶ 21 & Ex. 21.) The report, which summarizes credit scores across the three major credit reporting

agencies, includes the DRS collection account and notes that it is "disputed by consumer." (*Id.* at 3.) None of Ms. Healey's Experian or Trans Union credit reports are in the record before the court.

On February 2, 2009, Embarq sent a letter to the Washington State Attorney General's Consumer Protection Division in which it stated that the disputed Sprint/Embarq account had been opened using Ms. Healey's social security number and date of birth.[3] (Felton Decl. Ex. R.)

On July 10, 2009, Ms. Healey filed the instant lawsuit. (Compl. (Dkt. # 1).) In her complaint, Ms. Healey alleges that DRS's conduct violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, and the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq*. (Compl. ¶¶ 17-21, 30-38.)

II. ANALYSIS

A. Summary Judgment Standard

Summary judgment is appropriate if the pleadings, the discovery and disclosure materials on file, and any affidavits, when viewed in the light most favorable to the non-moving party, "show that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing there is

[3] The letter states that it was sent in response to information mailed to Embarq on January 29, 2009. (*Id.*) The January 29 mailing is not in the record, nor is there any evidence of how the Consumer Protection Division became involved in Ms. Healey's case.

no genuine issue of material fact and that he or she is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her burden, the nonmoving party must go beyond the pleadings and identify facts which show a genuine issue for trial. *Cline v. Indus. Maint. Eng'g. & Contracting Co.*, 200 F.3d 1223, 1229 (9th Cir. 2000). The non-moving party "must make a showing sufficient to establish a genuine dispute of material fact regarding the existence of the essential elements of his case that he must prove at trial." *Galen*, 477 F.3d at 658.

B. FDCPA Claims

"The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors from abuse, harassment, and deceptive collection practices." *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938 (9th Cir. 2007). Whether conduct violates the FDCPA requires an objective analysis that takes into account the "the least sophisticated debtor" standard. *See Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010); *Guerrero*, 499 F.3d at 934. The FDCPA is a strict liability statute, which "should be construed liberally in favor of the consumer." *Clark v. Capital Credit & Collection Serv., Inc.*, 460 F.3d 1162, 1175-76 (9th Cir. 2006) (quotation omitted).

1. FDCPA Statute of Limitations

DRS moves for summary judgment on Ms. Healey's claims based on collection activities that occurred before July 10, 2008—that is, more than one year before Ms. Healey filed her complaint.

Actions to enforce liability for violations of the FDCPA may be brought "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d); *see also*

Naas v. Stolman, 130 F.3d 892, 893 (9th Cir. 1997). Ms. Healey concedes that her FDCPA claims based on conduct that occurred before July 10, 2008 are barred by § 1692k(d). (Resp. (Dkt. # 59) at 8-10; *see also id.* at 15 (conceding § 1692g claims).) Therefore, the court grants DRS's motion for summary judgment on Ms. Healey's claims for violations of the FDCPA based on DRS's collection activities before July 10, 2008.

2. § 1692d Claim

Section 1692d of the FDCPA prohibits a debt collector from engaging "in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d. In addition to this general ban on harassing or abusive conduct, § 1692d provides a non-exclusive list of six prohibited acts. *Id.* This list includes such actions as using or threatening violence or other criminal means to harm the physical person, reputation, or property of any person; using obscene, profane, or abusive language; publishing a list of consumers who allegedly refuse to pay debts; advertising the debt for sale to coerce payment; repeatedly or continuously calling a person with the intent to annoy, abuse, or harass any person; and placing telephone calls without meaningful disclosure of the caller's identity. *Id*. Whether conduct violates § 1692d requires an objective analysis that considers whether the "least sophisticated debtor" would find the conduct harassing, oppressive, or abusive. *Guerrero*, 499 F.3d at 934.

DRS argues that it is entitled to summary judgment on Ms. Healey's § 1692d claim because Ms. Healey cannot point to any evidence that DRS engaged in any harassing, oppressive, or abusive conduct akin to the conduct prohibited by § 1692d. Ms.

Healey counters that DRS violated § 1692d by sending her "harassing letters" demanding payment of the Sprint/Embarq account. (Resp. at 12.)

DRS sent only four letters to Ms. Healey after July 10, 2008. (*See* Felton Decl. Ex. L at HEALEY 000099, 000095, 000091; *id.* Ex. M.; Healey Decl. ¶¶ 12-15.) Having reviewed these letters in light of the "least sophisticated debtor" standard, the court concludes that the letters do not constitute harassing, abusive, or oppressive conduct in violation of § 1692d. First, the July, August, and October 2008 collection letters used polite, informative language, were sent at a rate of less than one per month, and offered to settle the outstanding debt for less than the amount owed. (*See* Felton Decl. Ex. L at HEALEY 000099, 000095, 000091.) Second, DRS's October 20, 2008 letter enclosing the Sprint/Embarq billing statements states only that it encloses "documentation supporting the current balance due" in response to Ms. Healey's request for verification of the debt, and asks Ms. Heale either to "remit payment immediately" or to call customer service "if further information is required." (Felton Decl. Ex. M.) Even the "least sophisticated debtor" would not consider these letters harassing, abusive, or oppressive. *See Masuda v. Thomas Richards & Co.*, 759 F. Supp. 1456, 1465-66 (C.D. Cal. 1991) (holding that the mailing of six letters per month did not violate § 1692d because "[l]etters, so long as they comply with specific FDCPA requirements, represent the least intrusive means of communicating with debtors.").

Ms. Healey characterizes the letters as harassing because they repeatedly asked her to pay a debt that belonged to someone else.[4] (*See, e.g.*, Healey Decl. ¶¶ 12-13.) Ms. Healey testified that she felt that DRS's March 2008 letter, which included the Sprint billing statements, did not constitute adequate verification of the debt because it did not include the full list of items that she requested in her January 2008 letter. (Healey Dep. at 269.) Thus, from Ms. Healey's perspective, DRS was continuing to try to collect a debt that it had not proved to her was valid. Although it is not unreasonable for Ms. Healey to subjectively feel harassed when she continued to receive collection letters regarding an account that she had twice removed from her credit report, this *subjective* feeling of harassment is not actionable under the FDCPA. Rather, FDCPA claims are governed by an *objective* "least sophisticated debtor" standard that does not take into account the unique circumstances of the individual debtor. *See Guerrero*, 499 F.3d at 934.

Moreover, Ms. Healey's assertion that DRS harassed her by attempting to collect a debt that belonged to a third party is based on a flawed understanding of the FDCPA's verification requirements. The Ninth Circuit has held that, "[a]t the minimum, verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming." *Clark*, 460 F.3d at 1173-74 (internal citation omitted). In *Clark*, after the debtors requested verification of

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[4] The section of Ms. Healey's response addressing § 1692d is rife with exaggerations and misstatements of the record. (*See* Resp. at 11-12.) Contrary to Ms. Healey's assertions, a review of Ms. Healey's letters to DRS reveals that she never "asked [DRS] to produce any proof that the account belonged to her and not another Wendy Healey," and she did not inform DRS until November 2008—after the allegedly "harassing" letters were sent—that she did not consider the Sprint billing statements to be "proof that she was the one who opened the account." (*Id.*)

the debt, the debt collector obtained information from the creditor "about the nature and balance of the outstanding bill and provided the [debtors] with documentary evidence in the form of the itemized statement." *Id.* at 1174. The Ninth Circuit held that, by sending the itemized statement to the debtors, the debt collector satisfied its verification obligations under § 1692g. *Id.* The Ninth Circuit also noted that "the FDCPA did not impose upon [the debt collector] any duty to investigate independently the claims presented by" the creditor; and that, when verifying a debt, a debt collector generally may "reasonably rely upon information provided by a creditor who has provided accurate information in the past." *Id.* There is no requirement that the debt collector respond to a timely request for validation within 30 days; rather, the debt collector must cease collection activities until it mails the verification documents to the consumer. Once the debt collector obtains verification of the debt and mails a copy of the verification documents to the consumer, it may resume its collection activities. 15 U.S.C. § 1692g(b).

Here, in response to Ms. Healey's request for verification of the debt, DRS mailed Ms. Healey a copy of the itemized billing statement on the Sprint/Embarq account that demonstrated the amount of the outstanding bill and showed that the debt was in the name of Wendy Healey. Thus, the undisputed facts establish that DRS satisfied its obligation to verify the debt under the FDCPA. When Ms. Healey did not respond to DRS's correspondence, DRS was entitled to resume collection activity. 15 U.S.C. § 1692g(b). DRS's conduct in resuming that activity, therefore, was lawful and was not harassing, abusive, or oppressive in violation of § 1692d.

3. § 1692e Claims

DRS moves for summary judgment on Ms. Healey's claims under § 1692e, which prohibits the use of "false, deceptive, or misleading representation[s] or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Although Ms. Healey concedes that summary judgment is appropriate on her claims that DRS violated § 1692e by "falsely representing the compensation it could receive, and failing to communicate that the debt was disputed" (Resp. at 12 n.3), Ms. Healey continues to assert claims that DRS falsely represented the "character, amount, or legal status" of her debt in violation of § 1692e(2)(A), and "[c]ommunicat[ed] or threaten[ed] to communicate to any person credit information which is known or which should be known to be false" in violation of § 1692e(8).

a. § 1692e(2)(A) Claim

The FDCPA prohibits a debt collector from making a false, deceptive, or misleading representation about "the character, amount, or legal status of any debt." 15 U.S.C. § 1692e(2)(A). The plaintiff is not required to prove that the defendant knowingly or intentionally made the false representation. *Clark*, 460 F.3d at 1176. A debt collector is not liable for a false representation, however, if "the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c). Thus, "if a debt collector reasonably relies on the debt reported by the creditor, the debt collector will not be liable for any errors." *Clark*, 460 F.3d at 1177. Because the bona fide error defense is an affirmative defense, the debt collector bears the burden of proof. *Id.*

Viewing the evidence in the light most favorable to Ms. Healey, and mindful that the FDCPA does not require proof that a violation of § 1692e(2)(A) was knowing or intentional, the court concludes that Ms. Healey has met her burden to establish a genuine issue of material fact regarding whether DRS made a false representation about "the character, amount, or legal status" of the debt when it represented in its collection letters and to the credit reporting agencies that the delinquent Sprint/Embarq account belonged to her.

DRS argues that Ms. Healey cannot prove her § 1692e(2) claim because the FDCPA does not impose on a debt collector any duty to independently investigate the debt or the debtor. (Reply (Dkt. # 63) at 5 (citing *Clark*, 460 F.3d at 1174).) Although DRS is correct, this rule applies to violations of § 1692g, not violations of § 1692e. *See Clark*, 460 F.3d at 1174.[5] As the Ninth Circuit noted in *Clark*, the court's determination that the debt collector's verification of the debt did not violate the FDCPA was not the

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[5] To support its contention that it is entitled to summary judgment on Ms. Healey's § 1692e claims, DRS relies in its reply brief—and relied at oral argument—on *Becker v. Genesis Financial Services*, No. CV-06-5037-EFS, 2007 WL 4190473 (E.D. Wash. Nov. 21, 2007). Having reviewed *Becker*, the court respectfully declines to follow it because *Becker* did not apply the correct standard to the § 1692e claims. The *Becker* court based its analysis on *Bleich v. Revenue Maximization Group, Inc.*, 233 F. Supp. 2d 496, 500-01 (E.D.N.Y. 2002). *See Becker*, 2007 WL 4190473, at *7-8. In 2006, however, the Ninth Circuit disapproved the standard the *Bleich* court applied to § 1692e claims. *Clark*, 406 F.3d at 1175. Although the *Clark* court agreed with *Bleich* that a debt collector may reasonably rely on its client's statements when verifying a debt pursuant to § 1692g, *see id.* at 1174, the court expressly disagreed with *Bleich*'s conclusion that a plaintiff must show that the debt collector knowingly or intentionally misrepresented the debt in order to prevail under § 1692e, *see id.* at 1175 (citing *Bleich*, 233 F. Supp. 2d at 500-01). In addition, the *Becker* court improperly applied *Clark*'s § 1692g standard to the plaintiff's § 1692e(2) claim. *Becker*, 2007 WL 4190473, at *9 (citing *Clark*, 406 F.3d at 1174). For these reasons, the court finds neither *Becker* nor *Bleich* persuasive in analyzing Ms. Healey's § 1692e claims.

end of the court's inquiry into the plaintiffs' claims. *Id.* Rather, the court continued on to analyze the plaintiffs' claim that the debt collectors knew that the debt alleged by the creditor was "invalid and misstated" in violation of § 1692e(2)(A). *Id.* The Ninth Circuit held that a debt collector's conduct need not be knowing or intentional to violate § 1692e. *Id.* at 1176. The court recognized, however, that there is a "narrow exception to strict liability" under the FDCPA where "the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." *Id.*; 15 U.S.C. § 1692k(c).

Here, Ms. Healey has presented evidence that DRS falsely represented in its collection letters and its communications to the credit agencies that she was responsible for the delinquent Sprint/Embarq account. In light of the FDCPA's strict liability standard, this evidence is sufficient to establish a genuine issue of material fact regarding whether DRS violated § 1692e(2)(A). Further, because DRS has pointed the court to no evidence that its reliance on Sprint/Embarq's representations regarding Ms. Healey's account was reasonable or that it maintained procedures to avoid errors, it has failed to establish that it is entitled on summary judgment to the bona fide error affirmative defense. *See Clark*, 460 F.3d at 1177. The court therefore DENIES DRS's motion for summary judgment on Ms. Healey's claim for violation of 1692e(2)(A).

b. § 1692e(8) Claim

The FDCPA prohibits "communicating or threatening to communicate . . . credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed." 15 U.S.C. § 1692e(8). The language

of § 1692e(8), unlike the language of § 1692e(2), requires the plaintiff to show that the defendant knew or should have known that the information was false. *Id.; see also Clark*, 460 F.3d at 1176 n.11 (noting that although the FDCPA is generally a strict liability statute, Congress expressly required elements of knowledge and intent where it deemed them necessary). Here, Ms. Healey has offered no evidence that DRS knew or should have known that the debt it purchased from Sprint/Embarq was invalid. Rather, DRS requested and received documents verifying the debt from Sprint/Embarq; DRS sent those documents to Ms. Healey; and DRS resumed its collection activities only after Ms. Healey failed to respond in any way to its mailing. Ms. Healey's letters to DRS stated only that the account was not hers: they did not explain that Ms. Healey had been the victim of identity fraud, did not state that she had twice removed the account from her credit report, and did not, until November 2008, put DRS on notice that she considered the Sprint/Embarq billing statements to be insufficient verification of the debt.[6] Finally, Ms. Healey concedes that summary judgment is appropriate on her claim that DRS failed to report that the debt was disputed. Because Ms. Healey has not offered evidence demonstrating a genuine issue of material fact regarding whether DRS communicated

[6] At oral argument, counsel for Ms. Healey pointed out that DRS knew that the Sprint/Embarq account had likely been assigned to other agencies in the past. (*See* Schwartz Dep. at 22 ("I am aware that it's the normal practice of Sprint/Embarq to assign to multiple agencies, yes, prior to us obtaining it. I don't know who they assigned it to.").) Counsel, however, has directed the court to no authority for the proposition that knowledge that Sprint/Embarq may have assigned the account to other collection agencies should have put DRS on notice that the account did not belong to Ms. Healey.

credit information which it knew or should have known was false, the court grants DRS's motion for summary judgment on Ms. Healey's claim under § 1692e(8).

4. § 1692f Claims

Section 1692f of the FDCPA prohibits a debt collector from using "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f. Whether conduct violates § 1692f requires an objective analysis that takes into account the "the least sophisticated debtor" standard. *See Donohue*, 592 F.3d at 1030.

DRS moves for summary judgment on all of Ms. Healey's claims under § 1692f. In her response, Ms. Healey concedes several of her claims, but argues that summary judgment is inappropriate on her claim for violation of § 1692f(1), which prohibits "[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." (Resp. at 14.) Ms. Healey contends that the amount DRS tried to collect was not authorized by law or agreement because (1) DRS acknowledged there was no underlying agreement signed by the original debtor; (2) DRS should have known that the account did not belong to Ms. Healey.

The court concludes, viewing the evidence in the light most favorable to Ms. Healey, that DRS did not use unfair or unconscionable means of collecting the debt. Ms. Healey's argument that the debt was not authorized by law or agreement is unavailing. Contrary to Ms. Healey's assertions, DRS did not concede that there was no underlying contract. (*See* Supp. Schwartz Dep. (Dkt. # 69) at 38 (stating that there are no signed contracts for landline telephone accounts and that the fact that there is no signature does

not mean there was not a contract).) In addition, Ms. Healey has offered the court no evidence that DRS should have known the account did not belong to Ms. Healey. Although Ms. Healey's letters stated that the account was not hers, she did not inform DRS that she had been a victim of identity theft or that she had successfully removed the account from her credit report twice in the past. Rather, Ms. Healey stated only that she had never had an Embarq account, and DRS appropriately responded by mailing her the billing statements for the Sprint/Embarq account that had been opened under her name.

To the extent Ms. Healey challenges DRS's other actions or communications, those claims, too, are unavailing. The letters DRS sent to Ms. Healey were informational and nonthreatening. *See Wade v. Regional Credit Ass'n*, 87 F.3d 1098, 1100-01 (9th Cir. 1996). In addition, as noted above, the letters were relatively infrequent: DRS sent only four between July 2008 and October 2008. Similarly, the court is not persuaded by Ms. Healey's assertion that DRS's "refusal to investigate" was unfair or unconscionable. DRS sought verification documents and delivered them to Ms. Healey upon request in compliance with § 1692g. Because Ms. Healey did not respond to DRS's mailings, DRS had no reason to investigate further. None of DRS's conduct rises to the level of the "unfair or unconscionable" conduct listed in § 1692f. The court therefore concludes, viewing the evidence in the light most favorable to Ms. Healey, that summary judgment is appropriate on Ms. Healey's § 1692f claims.

5. FDCPA Damages

The FDCPA provides that:

> any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—
>
> (1) any actual damage sustained by such person as a result of such failure;
>
> (2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; . . .
>
> (3) . . . the costs of the action, together with a reasonable attorney's fee as determined by the court.

15 U.S.C. § 1692k(a). In determining the amount of additional damages under § 1692k(2)(A), the court "shall consider . . . the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional[.]." 15 U.S.C. § 1692k(b)(1). As noted above, the FDCPA provides an affirmative defense under which the debt collector cannot be held liable for a violation of the statute if it shows "by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c).

DRS seeks a determination on summary judgment that Ms. Healey cannot establish any actual damages resulting from any violations of the FDCPA. Ms. Healey concedes that she cannot recover damages based on her assertions that DRS's violations of the FDCPA resulted in a reduced line of credit and an increased homeowner's insurance premium. (Resp. at 17.) Ms. Healey contends, however, that she is entitled to

actual damages because the initial denial of her application for a loan to buy a new vehicle was "extremely upsetting and very humiliating and embarrassing." (*Id.*)

The Ninth Circuit has not ruled on whether emotional distress damages are recoverable under the FDCPA, and the district courts are split on the issue. *See Riley v. Giguiere*, 631 F. Supp. 2d 1295, 1315 (E.D. Cal. 2009) (citing cases). In *Riley*, the court concluded that emotional damages are available for violations of the FDCPA. The *Riley* court observed that the FDCPA's damages provision is "virtually identical to that of the FCRA," and that the "Ninth Circuit has held that 'actual damages' under the FCRA includes recovery for 'emotional distress and humiliation.'" *Id.* (quoting *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995)). The *Riley* court therefore concluded that a plaintiff may recover emotional distress damages for violations of the FDCPA provided she shows that she actually suffered symptoms of emotional distress. *Id.*

The court is persuaded by the *Riley* court's analysis, and, like *Riley*, holds that "actual damages" under the FDCPA includes emotional distress damages. Although Ms. Healey admits that she did not seek psychological or medical treatment for her emotional distress (*see* Healey Dep. at 218), this is not dispositive. *See Riley*, 631 F. Supp. 2d at 1315 (holding that a plaintiff need not prove the elements of a claim for emotional distress under state tort law order to recover emotional distress damages under the FDCPA). Therefore, the court denies DRS's motion for a determination on summary judgment that Ms. Healey cannot prove actual damages under the FDCPA.

C. FCRA Claim

"Congress enacted the [FCRA] in 1970 'to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.'" *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1153 (9th Cir. 2009) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007)). Section 1681s-2 of the FCRA imposes two responsibilities on sources that provide credit information to credit reporting agencies ("CRAs"). These sources, including debt collectors, are called "furnishers" under the statute. First, a furnisher must provide accurate information. 15 U.S.C. § 1681s-2(a). Second, a furnisher must investigate and/or correct inaccurate information. 15 U.S.C. § 1681s-2(b). These duties are triggered only "'upon notice of dispute' – that is, when a person who furnished information to a CRA receives notice from the CRA that the consumer disputes the information." *Gorman*, 584 F.3d at 1154. "[N]otice of a dispute received directly from the consumer does not trigger furnishers' duties under subsection (b)." *Id*.

Section 1681s-2(b) provides that, after receiving a notice of dispute, the furnisher shall:

> (A) conduct an investigation with respect to the disputed information;
>
> (B) review all relevant information provided by the [CRA] pursuant to section 1681i(a)(2) . . .;
>
> (C) report the results of the investigation to the [CRA];
>
> (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other [CRAs] to which the person furnished the information . . .; and

> (E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1) . . . (i) modify . . . (ii) delete . . . [or] (iii) permanently block the reporting of that item of information [to the CRAs].

15 U.S.C. § 1681s-2(b). "The FCRA expressly creates a private right of action for willful or negligent noncompliance with its requirements." *Gorman*, 584 F.3d at 1154. This right of action, however, is limited to claims arising under § 1681s-2(b). *Id.* "A private litigant can bring a lawsuit to enforce § 1681s-2(b), but only after reporting the dispute to a CRA, which in turn reports it to the furnisher. *Nelson v. Chase Manhattan Mortgage Corp.*, 282 F.3d 1057, 1059-60 (9th Cir. 2002). Duties imposed under § 1681s-2(a), by contrast, are enforceable only by federal or state agencies. 15 U.S.C. § 1681s-2(d).

A furnisher's investigation of a dispute pursuant to § 1681s-2(b)(1)(A) must be reasonable. *Gorman*, 584 F.3d at 1157. The burden of showing the investigation was unreasonable is on the plaintiff. *See id.* The furnisher's duty to conduct a reasonable investigation arises when it receives a notice of dispute from a CRA. *Id.* "Such notice must include 'all relevant information regarding the dispute that the [CRA] has received from the consumer." 15 U.S.C. § 1681i(a)(2)(A). Thus, "the pertinent question is . . . whether the furnisher's procedures were reasonable in light of what it learned about the nature of the dispute from the description in the CRA's notice of dispute." *Gorman*, 584 F.3d at 1157 (citing *Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7th Cir. 2005) (holding that the furnisher's investigation in that case was reasonable given the "scant information" it received from the CRA regarding the nature of the consumer's dispute)). Although reasonableness is normally a question for the finder of fact,

summary judgment is appropriate "when only one conclusion about the conduct's reasonableness is possible." *Id.* at 1157.

DRS contends that summary judgment is appropriate on Ms. Healey's FCRA claim because she did not notify the CRAs of any dispute with DRS until November 22, 2008, and she has no evidence that DRS negligently or willfully failed to comply with any FCRA requirements thereafter. Ms. Healey focuses on Experian in her response. Ms. Healey asserts that she notified Experian that she disputed the accuracy of DRS's information; that Experian notified DRS of the dispute by sending it an Automated Consumer Dispute Verification ("ACDV") form; and that DRS verified that the information reported on her Experian credit report was accurate.[7] (Resp. at 15-16 (citing Hughes Dep. at 92-93).)

The court concludes that Ms. Healey has not met her burden to "make a showing sufficient to establish a genuine dispute of material fact regarding the existence of the essential elements of [her] case that [she] must prove at trial." *Galen*, 477 F.3d at 658. First, with respect to Trans Union, the only evidence in the record is Trans Union's December 2, 2008 letter to Ms. Healey in which it stated that the disputed DRS account did not appear on Ms. Healey's Trans Union credit report. (Felton Decl. Ex. Q.) Ms. Healey has offered the court no evidence that Trans Union reported any dispute to DRS as required to trigger DRS's duties under the FCRA. Thus, summary judgment is

[7] Contrary to Ms. Healey's assertion (Resp. at 16), DRS does not deny that it received notice of a dispute from Experian.

appropriate to the extent Ms. Healey brings FCRA claims against DRS arising out of a dispute notice received from Trans Union.

Nor does the evidence before the court support a conclusion that DRS conducted an unreasonable investigation following receipt of a dispute notice from Experian. Experian's Rule 30(b)(6) deponent, Kim Hughes, testified that after Experian received Ms. Healey's letter in November 2008, it initiated a dispute with DRS and "conveyed the information that Ms. Healey stated about the account to appear also on the dispute verification form that was transmitted to [DRS]." (Hughes Dep. at 92-93.) Although the ACDV form that Experian transmitted to DRS is not in the record before the court, the Ms. Hughes testified that Experian coded the dispute as "claims inaccurate information." (*Id.* at 94.) In December 2008, Experian received verification from DRS that the information it had reported about the Sprint/Embarq account was accurate. (*Id.* at 110-11.) Experian then prepared a report for Ms. Healey in which it summarized the results of its investigation. (*Id.* at 111; Healey Decl. Ex. 19.) The report, dated December 23, 2008, shows that Experian "completed investigating the items you disputed with the sources of the information" and notes that the DRS item "remains" on the account because it had been verified as accurate. (Healey Decl. Ex. 19 at 2.) The report lists the DRS collection account as a "potentially negative item[] or item[] for further review," and notes that it was disputed by the consumer. (*Id.* at 4.) The record does not contain any evidence regarding the investigation DRS performed following its receipt of the ACDV form.

This evidence is insufficient to survive summary judgment. In *Gorman*, the notices sent by the CRAs to the furnisher were in the record, as were the furnisher's notes regarding the inquiries it made after receiving the notices. *Gorman*, 584 F.3d at 1157-61. The court, therefore, was able to evaluate both the notices and the furnisher's response in determining whether the furnisher's investigation was reasonable in light of the information provided by the CRAs. *Id.* Similarly, in *Westra*, the Seventh Circuit concluded that a furnisher's investigation was reasonable where the CRA's notice stated only that consumer was disputing the charge on the basis that the account did not belong to him, and did not provide any information about possible fraud or identity theft. *Westra*, 409 F.3d at 827. Under these circumstances, the furnisher satisfied its obligations when it verified the consumer's name, address, and date of birth to the CRA. *Id.*

Here, by contrast, neither the CRAs' dispute notices nor evidence of DRS's investigation are before the court. The court thus is left to speculate regarding the reasonableness of DRS's investigation in light of the information provided by the CRA. To survive summary judgment, it is not enough that DRS's conclusion regarding the validity of the Sprint/Embarq account ultimately proved to be incorrect. As the Ninth Circuit has made clear, "[a]n investigation is not necessarily unreasonable because it results in a substantive conclusion unfavorable to the consumer, even if that conclusion turns out to be inaccurate." *Gorman*, 584 F.3d at 1161. Therefore, in light of the absence in the record of evidence of the CRAs' dispute notices or DRS's investigation in response to those notices, the court concludes that Ms. Healey has not met her burden to establish a

genuine issue of material fact regarding whether DRS violated the FCRA by failing to complete a reasonable investigation.

In addition, to the extent Ms. Healey alleges that DRS violated the FCRA by failing to notify the CRAs that her account was in dispute, this claim also fails. A furnisher's failure, after receiving notice of a dispute from a CRA, to report a "bona fide dispute . . . that could materially alter how the reported debt is understood . . . gives rise to a furnisher's liability under § 1681s-2(b)." *Gorman*, 584 F.3d at 1163 (holding that consumer could bring a claim against the furnisher for failing to report to the CRAs that a charge was still disputed following investigation). Here, the only evidence in the record is that DRS accurately reported to Experian that Ms. Healey disputed the validity of the Sprint/Embarq account. (Healey Decl. Ex. 19 at 4.) Summary judgment, therefore, is appropriate on this claim as well.

III. CONCLUSION

For the foregoing reasons, the court GRANTS in part and DENIES in part DRS's motion for summary judgment (Dkt. # 55).

Dated this 18th day of May, 2011.

JAMES L. ROBART
United States District Judge